

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

LYESHA CLARK, Individually, and as
Parent And Natural Guardian of
Z.C., a minor

Plaintiffs,

v.

OFFICER DWAYNE MERRELL, Badge #7078
c/o CITY OF PHILADELPHIA POLICE
DEPARTMENT, Individually and in his
Official Capacity and CITY OF
PHILADELPHIA

Defendants.

CIVIL ACTION NO. 2:19-cv-01579-RBS

**PLAINTIFFS' UNOPPOSED MOTION FOR APPROVAL OF SETTLEMENT AND
ALLOCATION OF SETTLEMENT PROCEEDS**

Plaintiff, Lyesha Clark, Parent and Legal Guardian of Z.C., a minor, through the undersigned counsel, respectfully requests that this Court enter an Order approving the final settlement of the above-captioned action as follows:

I. BACKGROUND ON LITIGATION AND SETTLEMENT

1. This is a Section 1983 case filed against Defendant Philadelphia Police Officer Dwayne Merrell. The case arises from Defendant's violation of the Philadelphia Police Directive regarding vehicular pursuits causing subsequent injuries of Minor-Plaintiff Z.C.

2. Plaintiffs are Minor-Plaintiff Z.C., date of birth 04/24/2010 and Lyesha Clark, Parent and Natural Guardian of Minor-Plaintiff Z.C.

3. Minor-Plaintiff, Z.C., is a minor and resident of the state of Pennsylvania, residing with her mother, Lyesha Clark.

4. On April 11, 2019, Plaintiff Lyesha Clark initiated this case by way of filing a Complaint. The Complaint alleged, *inter alia.*, that on April 15, 2017, Defendant Merrell violated minor-plaintiff's constitutional rights by engaging in a high-speed motorcycle pursuit without justification and in violation of the City of Philadelphia Police Department's policies and direct orders from his supervisors. The high-speed pursuit created a danger to the minor-plaintiff, who was struck by the pursued motorcycle as a pedestrian while crossing the street in the area of the 69th Street Station in Upper Darby. The accident resulted in catastrophic injuries to Minor-Plaintiff Z.C.

5. The case proceeded through discovery which included the depositions of six witnesses, extensive written discovery, Plaintiffs' and Defendants' exchange of expert reports, and the filing numerous pre-trial motions, including surviving both a motion to dismiss and motion for summary judgment. The latter motion was appealed to the Third Circuit Court of Appeals.

6. A mediation was held through the Third Circuit Mediation Program on June 24, 2025.

7. On June 29, 2025, the parties reached an agreement to settle this claim for a gross settlement of Two Million and Five Hundred Thousand Dollars (\$2,500,000.00).

II. PROPOSED ALLOCATION OF THE SETTLEMENT FUNDS

8. The Pennsylvania Department of Human Services asserted a lien in this matter, in the amount of \$298,722.46. Plaintiffs requested a reduction in the lien. The lien was reduced to \$199,158.26 . *See* correspondence dated August 1, 2025 attached hereto as Exhibit "A."

9. The litigation costs incurred by Plaintiffs' counsel total \$35,135.38. A full and complete accounting of all costs and expenses is attached hereto as Exhibit "B." All of these costs are specifically not attributed to this law firm's general overhead expenses.

10. This settlement was reached through the efforts of David Inscho, Esquire, Charles Becker, Esquire, and Priscilla E. Jimenez, Esquire, on behalf of the Plaintiffs.

11. Plaintiffs entered into a contingency fee agreement that provides for counsel to receive one-third of any gross recovery, before deduction for expenses. The litigation involved a substantial amount of work by plaintiffs' counsel. As such, Plaintiffs' counsel fee is \$833,333.33. The fee agreement is fair and reasonable under the circumstances of the case.

12. Plaintiffs' counsel thoroughly investigated and vigorously litigated this case in preparation for trial. Counsel's efforts to date include:

- a) Deposing six witnesses;
- b) Preparing pleadings;
- c) Serving and responding to extensive written discovery;
- d) Responding to and surviving Defendants' Motion to Dismiss;
- e) Responding to and surviving Defendants' Motion for Summary Judgment;
- f) Mediation through the Third Circuit Mediation Program;
- g) Retaining and preparing expert witnesses in the field of Law Enforcement, Physical and Rehabilitation Medicine, and Neuropsychology; and,
- h) Negotiating a settlement agreement with Officer Dwayne Merrell and the City of Philadelphia Police Department.

13. Plaintiffs request the allocation of the net proceeds of the settlement, after deduction attorney's fees and costs, as follows:

I.	To: Kline & Specter, P.C. [one-third attorney's fee]	\$ 833,333.33
II.	To: Kline & Specter, P.C. [reimbursement of costs advanced]	\$ 35,135.38

III. To: Kline & Specter, P.C. \$ 199,158.26
[Pennsylvania Department
of Human Services lien]

The balance of the settlement proceeds equals the sum of \$1,432,373.03 and shall be distributed as follows:

IV. Negligence claims [100%]

To: Z.C., a Minor \$ 1,432,373.03
in a restricted account not to be
withdrawn before majority or upon prior
leave of Court.

14. Plaintiffs consulted with the following experts: Physical Medicine and Rehabilitation Expert, Guy W. Fried, M.D., Law Enforcement Officer and Police Tactics and Procedures Expert, Greg Meyer, Certified Nurse Life Care Planner, Kimberly D. Kushner, and Neuropsychologist, Gregory Alberts, Ph.D., to determine Minor-Plaintiff, Z.C.'s, injuries and prognosis.

15. The proposed settlement will provide Minor-Plaintiff with more than sufficient funds to pay for her future medical care needs. Certified Life Care Planner, Kimberley Kushner, provided a life care plan for Z.C. See Report of CLCP Kushner, attached hereto as Exhibit "C." The Life Care Plan opines that future care will be \$300,221.00 for Z.C.'s lifetime.

16. Minor-Plaintiff's condition is permanent and likely to remain stable or slightly improve. Regarding Z.C.'s health, Dr. Alberts wrote:

At this time, considering that she is now five years post-injury, her neurocognitive deficits are very likely permanent. She does have the potential to benefit, somewhat, from further rehabilitation therapies and specialized education programming (i.e., an Individualized Education Program under the Education Classification of TBI). Her therapies should include Cognitive Rehabilitation Therapy, Psychological Therapy and Psychiatric Evaluation/Treatment.

See Report of Dr. Alberts, attached hereto as Exhibit “D.” Dr. Alberts noted in his report that Minor-Plaintiff Z.C. has acquired the following diagnoses due to her injuries:

- a) History of Traumatic Brain Injury (TBI) with residual/chronic right hemisphere cerebral dysfunction.
- b) Post-Traumatic Headaches, chronic, secondary to TBI;
- c) Specific Learning Disorder in Mathematics (secondary to TBI);
- d) Dysgraphia (secondary to TBI);
- e) Visual Memory Deficits (secondary to TBI);
- f) Mood Disorder Related to Another Medical Condition (TBI), Mild, with labile mood and reduced social initiative and engagement.

17. Plaintiff, Lyesha Clark, has certified the physical condition of Z.C. and approves the proposed settlement and distribution set forth in this Motion for Court Approval. See Verification attached as Exhibit “E.”

18. Plaintiffs provided a draft of this Motion to Defendants, and they had no objection.

WHEREFORE, Plaintiffs request Court approval of the proposed settlement recited above and entry of the proposed Order.

KLINE & SPECTER, P.C.

By: David K. Inscho
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Attorneys for Plaintiffs

Date: August 5, 2025

CERTIFICATE OF SERVICE

I, David K. Inscho, Esquire, hereby certify that on the below date, the foregoing Plaintiffs' Unopposed Motion for Approval of Settlement and Allocation of Settlement Proceeds was served via ECF filing on the below counsel:

Nicholas A. Cummins, Esquire
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Date: August 5, 2025